Consulting Agreement

**[Job Title]**

signed by and between

[Name]

CVR no. [CVR no.]

[Address]

[Postcode and city]

(hereinafter referred to as “Customer”)

and

[Name]

CVR no. [CVR no.]

[Address]

[Postcode and city]

(hereinafter referred to as "Supplier")

# Background & Purpose

* 1. The Parties have entered into this Consulting Agreement on [●], as specified in greater detail herein, including in any and all annexes hereto (the “Agreement”).
	2. [●]
	3. The purpose of this Agreement is to lay down the framework for the provision of consulting services by the Supplier as well as the detailed content thereof.

# Delivery

* 1. The Customer requires the Supplier’s assistance with regard to the Customer’s [●]. In connection with this, the Supplier shall make available to the Customer the consulting resources specified in detail in Annex 2 (“Delivery”).
	2. The price of the Delivery has been estimated in Annex 2.
	3. The more detailed delivery terms that the Delivery is subject to, including in relation to limitations of liability and remedies for breach of contract, are specified in Annex 1 and this Agreement (without annexes).

# Signatures

Each Party shall receive a signed copy of the Agreement.

|  |  |  |
| --- | --- | --- |
| [Place], [Date]  |  |  |
| For the Customer |  |  |
| Name: [Name]Title: [Title] |  | Name: [Name]Title: [Title] |

|  |  |  |
| --- | --- | --- |
| For the Supplier |  |  |
| Name: [Name]Title: [Title] |  | Name: [Name]Title: [Title] |

Annex 1

**Delivery Terms**

# Agreed Services

* 1. Unless otherwise agreed in writing, the Delivery comprises hourly services in the form of work done by the Supplier, cf. the Delivery specification. Delivery of materials of any kind, including, for example, hardware or standard software, shall explicitly not fall within the scope of the Agreement and is subject to separate agreement.
	2. The Agreement also comprises parts of the Delivery whose provision has commenced prior to the effective date of this Agreement. Unless otherwise agreed in writing, the Agreement also comprises additional deliveries derived from or otherwise associated with the Delivery.
	3. Within the scope of the Delivery, the Supplier shall work subject to the Customer’s control, management and responsibility. However, such power to exercise control shall only refer to the Supplier’s professional characteristics and the provision of the Delivery. The Supplier shall retain its power to exercise control in all aspects of employment.
	4. The Delivery shall be provided as a professional service in accordance with the detailed agreement between the Parties.
	5. The Delivery shall be carried out in accordance with good IT practice.
	6. The Supplier shall employ qualified resources for the provision of the Delivery. The Supplier shall seek to ensure continuity in the resources used in connection with the performance of the Agreement. However, the Supplier may, wherever necessary, replace resources, including designated resources, which have been allocated to the Agreement, with other corresponding resources.
	7. The Supplier may use subcontractors. Use of subcontractors, if any, is of no concern to the Customer, to the extent the Supplier is directly responsible to the Customer for the subcontractors’ actions and omissions as if they were the Supplier’s own actions and omissions.
	8. The Parties are subject to a common duty of confidentiality, including pursuant to Section 19 of the Danish Marketing Practices Act, with regard to information that makes it possible to gain an insight into the performance of the work. A potentially stricter duty of confidentiality may follow from a separate agreement.
	9. The Customer is obliged to always, to a reasonable extent, place at the Supplier's disposal all reasonable facilities and resources, including IT equipment and software, in connection with the provision of the Delivery. Reasonable facilities here shall mean such facilities and resources that are not inferior to the ones the Customer makes available to its own (IT) staff.
	10. The Customer shall secure the IT environment that the Supplier’s employees work in/with so that there is no risk of loss of or damage to the Customer’s IT systems, including loss of or damage to data, e.g. by ensuring that there is sufficient backup before the Supplier’s employees gain access to the Customer’s IT systems, which include any form of data and software, including data that may concern ongoing projects or tasks the Supplier is involved in. Unless expressly agreed in writing between the Parties, the Supplier shall not take backup of such data, whether or not the data have been generated by the Supplier.
	11. The Customer understands and agrees that the Supplier’s resources, who fall within the scope of the Delivery, may take part in training events, meetings, professional and social activities, etc. at or at the Supplier’s request. The Supplier shall, to the extent possible, plan such events in consultation with the Customer as well as orient the Customer thereof with 14 days’ notice.
	12. The Customer understands and agrees that the Supplier’s resources who fall within the scope of the Delivery shall have the possibility to take their planned holidays, etc. in accordance with the common provisions of the Danish Holidays Act.

# Price and Payment

* 1. Unless otherwise specifically agreed, the price of the Delivery shall be calculated as time and materials actually spent and used, respectively, in connection with the provision of the Delivery.
	2. In addition, other costs incurred, including for materials, transport, commuting, board and lodging shall also be covered, but without mark-up.
	3. Unless otherwise explicitly stated, all time and price statements shall be considered to be estimates. Where such estimates are materially overrun, the Customer shall be informed thereof as quickly as possible so that the Parties can jointly agree on requisite consequential corrections.
	4. The Delivery shall be defrayed subject to the hourly rates specified in the Agreement. If hourly rates are not specified in the Agreement or stated for a resource used, the Supplier’s regular list prices applicable at the time when such a resource is used shall apply.
	5. The Supplier is entitled to adjust the hourly rates specified in the Agreement with the percentage change in the wage index in the private sector published by Statistics Denmark on 1 January. Where the calculation of this index is discontinued, such an adjustment can be based on another index that corresponds to it.
	6. The Delivery shall be provided in the period from [●] to [●] on all weekdays except for public holidays, Constitution Day, Christmas Eve and New Year’s Eve. The Supplier is entitled to overtime pay of [●] % in relation to the hourly rates applied if the Delivery subject to the Agreement between the Parties is provided outside this period.
	7. The Delivery is continuously invoiced monthly in arrears.
	8. Unless longer time has been specified on the respective invoice, the due date for all issued invoices is [●] days net. In case of delayed payment, the Supplier is entitled to claim interest from the due date at the rate of [●] % per [●]. In case of a default of payment, the Supplier is further entitled to suspend and withhold the Delivery or parts thereof.
	9. The Supplier shall continuously prepare the appropriate documentation for the scope of the provided services in the form of time sheets or the like and shall submit it to the Customer on request.

# Delivery Time

* 1. The hourly services shall have continuous Delivery Time, in line as they are provided by the Supplier(“Delivery Time”).
	2. The complaint period for the delivered parts of the Delivery starts from the Delivery Time.

# Rights and Software

Each Party shall keep the respective rights the Parties had as at the effective date of this Agreement, including to documentation, data and software, regardless of how these may be included in the Delivery.

## Result of Hourly Services

* + 1. As from the Delivery Time, the Customer shall be assigned an unlimited, transferable and non-exclusive right to use all results of the Supplier’s Hourly Services, including also the right to implement changes thereto of any kind. The Customer’s right of use extends to, among other things, documentation, data, customisations, integrations and custom software that have been developed as part of this Agreement. The full copyright to these parts of the Delivery shall be kept by the Supplier.
		2. The Customer’s rights in accordance with this subsection 4.1 shall also cover other companies than the Customer’s, for as long as they are part of the Customer’s Group.
		3. The Supplier guarantees that the parts of the Delivery that fall within the scope of this subsection 4.1 do not infringe on third-party rights, including on patent rights or copyrights of any kind.

## Other Rights

As regards any other part of the Delivery that does not fall within the scope of subsection 4.1, e.g. standard software and hardware, the Customer shall obtain the right that is specified in the terms that any such part may be subject to. All provisions of such terms, including with regard to rights of use, limitations of liability and amendments shall take precedence to this Agreement.

# Complaints and Liability

* 1. The complaint period for all Deliveries is [●] months from the Delivery Time, however, not earlier than [●] months after the Delivery Time of the last part of the Delivery, if the Parties have agreed on partial deliveries.
	2. The Supplier is entitled and obliged, at its own expense, to start remedying defects within a reasonable period of time after receiving an adequate complaint within the complaint deadline from the Customer.
	3. Where the Supplier does not rectify a defect within a reasonable period of time, the Customer is entitled to take advantage of the remedies for breach of contract available in accordance with the common provisions of Danish law (as limited by the agreed limitations of liability, in particular, in Section 6). Rectification within 30 working days from receiving a complaint shall always be considered to have happened within a reasonable period of time.
	4. This Section 5 constitutes an exhaustive description of the Supplier’s liability in connection with defective Deliveries.

# Limitation of Liability

* 1. The Supplier's liability complies with the common provisions of Danish law in the respective area, but subject to the limitations laid down in this Agreement and the Annex.
	2. The Supplier disclaims any liability for loss and damage that occur in connection with the provision by the Supplier of consultants for tasks where the overall performance of the task is managed by the Customer or third parties. The Parties agree that the nature of the Delivery shall cause it to primarily fall within the scope of this limitation of liability.
	3. The Supplier is not liable for the profitability, usability or suitability of the Delivery for a certain purpose or for the achievement of a specific result for the Customer.
	4. Under no circumstances may the Supplier be held liable for indirect losses, consequential losses, damage caused by IT viruses, operating losses, loss of data and expenses for its restoration, nor for loss of profit and other business losses.
	5. Under no circumstances may the Supplier be subject to compensation and/or a proportional discount whose total amount exceeds the overall remuneration that shall be paid for the Delivery in accordance with the Agreement.
	6. Subsections 6.4 and 6.5 shall not apply to faults which are owing to premeditated or grossly negligent actions carried out by the Supplier.

# Termination and Revocation

## Termination

* + 1. The Customer is entitled to terminate the Agreement henceforth (ex nunc), in whole or in part, with at least one month's prior written notice.
		2. The Supplier is not entitled to terminate the Agreement.
		3. Where the Agreement is terminated, the Supplier is under a duty to continue the provision of the Delivery unchanged until the expiry of the term of notice unless the Customer notifies the Supplier in writing that the Customer wants to have the provision discontinued. To the extent the Customer does not want the Delivery to continue till the end of the term of notice, the Supplier shall suspend the provision of the Delivery and seek to redeploy resources to the extent possible.
		4. The Customer is under a duty to pay for services provided prior to the expiry of the Agreement and for any expenses that may be incurred by the Supplier as a result of the Customer’s termination, including for remuneration of resources until such can be redeployed and for expenses for purchased materials and expenses incurred on the strength of the Agreement. The payment for resources is calculated in accordance with the hourly rates applicable to the Agreement.

## Revocation

* + 1. The Agreement may only be revoked, in whole or in part, in compliance with this subsection 7.2.
		2. Where a material breach of the Agreement is committed, and such a material breach is not rectified within not more than 30 days from the non-defaulting party's written notice to that effect (or at such a later time when rectification has been made possible by the non-defaulting party), the non-defaulting party is entitled to revoke the Agreement with the limitations that follow from the Agreement (including these terms) as well as any special terms and conditions associated with the Delivery, including standard software and hardware.
		3. If only parts of the Delivery suffer from material defects, only the parts of the Agreement that feature such faults or defects can be revoked, unless the fault is of such a nature that it materially reduces the usability of the entire Delivery.
		4. A default of payment is always considered to be a material breach of the entire Delivery.
		5. Where the Customer goes bankrupt or is subject to reorganisation proceedings, the Supplier is entitled to revoke the Agreement if the bankruptcy estate or, in case of reorganisation proceedings, the debtor does not, within one week, and, in case of reorganisation proceedings, without undue delay, after being urged so by the Supplier, declares its willingness to enter into the Agreement.

# Force Majeure

None of the Parties is liable for breach if the breach is owing to circumstances that should not have been anticipated by the Parties, including, for example, strikes, lockout or other conditions that fall within the scope of the concept of force majeure in Danish law.

# Data Protection

* 1. Information about the Customer will be stored and/or transferred in strict compliance with the existing data protection acts. The Customer can notify the Customer that the data may not be used for direct marketing.
	2. The Customer is responsible for ensuring that the Supplier is not granted access to personal data or data that are of a sensitive nature or data whose loss can cause losses to the Customer (e.g. in the form of access to the Customer’s production environment or in connection with provision of test data to the Supplier). Where the Supplier needs to access such data, the Customer is obliged to inform the Supplier of the nature of the data as well as that the Supplier should avoid loss of such data.
	3. To the extent the Supplier processes personal data on the Customer’s behalf, the Supplier only acts subject to instructions laid down by the Customer. The Supplier shall take the necessary technical and organisational security measures against the accidental destruction, loss or impairment of the data and shall ensure that the data are not disclosed to any unauthorised persons, nor are misused or otherwise processed in contravention of the law. The Supplier shall, at the Customer’s request, provide the Customer with sufficient information to ensure that the aforementioned technical and organisational security measures have been taken.

# Governing Law and Disputes

* 1. This Agreement is governed by Danish law with the exception of (a) any such rules that lead to the application of another law than Danish law and (b) the United Nations Convention on Contracts for the International Sale of Goods.
	2. In the event of a dispute between the Parties in connection with the Agreement, the Parties shall seek, in a positive, cooperative and responsible spirit, to initiate negotiations with a view to resolving the dispute. In this connection, a consultative opinion can be procured, at the request of one of the Parties, from an independent expert based on the Danish Institute of Arbitration’s regulations for legal/technical opinions on IT cases.
	3. If agreement cannot be reached (and prior to initiating proceedings at a court of law, cf. subsection 10.4), the Parties shall seek to resolve the dispute, at the request of any of the Parties, by mediation led by a mediator jointly appointed by the Parties. If the Parties do not reach agreement on electing a mediator within 5 working days after one of the Parties has requested that the dispute be resolved by mediation, each of the Parties may ask the Association of Danish IT Attorneys to appoint a mediator. Mediation is conducted, where relevant, in accordance with the Association of Danish IT Attorneys’ mediation procedure.
	4. If agreement cannot be reached by negotiations or, if so desired, by mediation, each of the Parties can bring the dispute to the competent court of law, i.e. the Supplier’s court of jurisdiction laid down in its Articles of Association.

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Annex 2

**Delivery Specification**

# Introduction

Section 2 of this Annex contains an exhaustive qualitative and quantitative specification of the Delivery. Section 3 of this Annex contains an estimate of the price of the Delivery. Section 4 of this Annex contains the Supplier’s general price list for provision of hourly services under this Agreement.

# Delivery

|  |  |  |
| --- | --- | --- |
| **Profile/Competence** | **Period** | **Scope of the consulting service** |
| **Start** | **End** | **Scope** |
| [E.g. name or type] | [●] | [●] | [E.g. Monday to Friday, selected days only, X times per week, etc.] | [E.g. project management, programming, etc. This are the limits of the consultant’s work] |

The delivery place for the Delivery is [●].

# Price

* 1. As at the effective date of the Agreement, an overall price for the Delivery is estimated in accordance with the following.

| **Description** | **Price model** | **Price** |
| --- | --- | --- |
| [●] | [●] |
| [●] | [●] |
| [●] | [●] |
| [●] | [●] |
| [●] | [●] |
| [●] | [●] |
| [●] | [●] |
| Overall price estimate for the Delivery | [●] |

# General Prices

* 1. All Services are provided or computed based on the following prices:

|  |  |
| --- | --- |
| Resources | Hourly rate in DKK |
| [●] | [●] |
| [●] | [●] |
| [●] | [●] |
| [●] | [●] |
| [●] | [●] |
| [●] | [●] |

* 1. Travel time is invoiced at [●] % of the hourly rates that have otherwise been agreed for the respective resources.
	2. The Supplier’s expenditures in connection with the performance of the Delivery are reimbursed by the Customer as per account rendered, without any mark-ups. Extraordinary expenditure, or, in other words, expenditure that exceeds DKK [●], is subject to the Customer's prior approval.

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